SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 871

RICHARD GREGORY, a/k/a DICK GREGORY,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court of Illinois, First District.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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OPINION BELOW

The opinion of the Illinois Appellate Court is reported at 95 Ill. App. 2d 396. The action of the Illinois Supreme Court in denying leave to appeal did not involve an opinion and is unreported.

JURISDICTION

The jurisdiction requisites are adequately set forth in the petition.

QUESTION PRESENTED

Whether a trial court committed "Manifest Error" in refusing to excuse for cause a venireman who expressed general disapproval of street demonstrations but who stated that she could be a fair and impartial juror where the petitioner was charged with two counts of battery and two counts of resisting arrest.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

These are adequately set forth in the petition.[1]

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1. Voir dire in Illinois criminal cases is governed by Illinois Supreme Court Rule 411 stating:

> "In criminal cases, the voir dire examination of jurors shall be conducted in accordance with Rule 233."

Illinois Supreme Court Rule 233 states:

> "The judge shall initiate the voir dire examination of jurors by identifying the parties and their respective counsel and briefly outline the nature of the case. The judge shall then put to the jurors any questions *which he thinks necessary,* touching their qualifications to serve as jurors in the cause on trial. *The parties or their attorneys shall be allowed a reasonable opportunity* to supplement such examination, but shall not directly or indirectly examine jurors concerning matters of law or instructions." (Emphasis added.)

STATEMENT OF FACTS

Prior to trial, the voir dire was conducted; only that portion pertaining to Mrs. Westbrook is relevant here. At p. 4 of his petition, (footnote 3), the petitioner states:

> "The examination of Mrs. Westbrook in its entirety is here reproduced as Appendix C. . . ."

Since the record of trial is not available to the State at this time, we have taken the liberty of including the petitioner's Appendix C in our Statement of Facts.

[442] The Court: Mrs. June Westbrook.

JUNE WESTBROOK, a member of the panel of veniremen, was [443] examined as to her qualifications and testified as follows:

Examination by Court.

Q. Mrs. Westbrook, you live at 918 West 6th Avenue, LaGrange, Illinois?

A. Yes.

Q. How long have you lived there?

A. 12 years.

Q. You are married and live with your family?

A. Yes, with my son and my husband.

Q. How old is your son?

A. 18 years.

Q. What does your husband do for a living?

A. Western Electric.

Q. How long has he been so employed?

A. 17 years.

Q. Does any member of your family work for the Chicago Police Department?

A. No, but I have a cousin who [444] works for Downers Grove, Illinois?

Q. How often do you see him?

A. Usually at a wake or funeral.

Q. Do you talk about his work?

A. No.

Q. Nothing about your cousin working for the Downers Grove Police Department, which would make you less than fair and impartial juror here?

A. No.

Q. Do you feel if you are chosen, you will be fair and impartial as a juror?

A. Yes.

* * * * *

[451] *Examination by Mr. Micheletto.*

Q. Mrs. Wesbrook, prior to moving to LaGrange where did you live?

A. I have always lived in LaGrange.

Q. Are you a life long resident of Chicago?

[452] A. Yes.

Q. Is your husband a life long resident of Chicago?

A. I think he came from Kansas City as a small child.

Q. Your son, what age is he?

A. 18 years.

Q. Does he work?

A. Yes, at Western Electric.

Q. Mrs. Westbrook do you know the defendant by reputation?

A. Just slightly.

Q. Have you ever seen him as an entertainer?

A. No.

Q. The fact that you have seen him on the news, would this cause you to be prejudiced prior to hearing any evidence in this case?

A. I don't believe in demonstrations.

Q. Could you receive the evidence with an open mind?

A. Yes.

Q. Do you feel you could follow the law as it is given to you regardless [453] of what you think it should be or what it is?

A. Yes.

Q. Will you arrive at a verdict based upon the evidence free from prejudice and sympathy?

A. Yes.

* * * * *

[460] *Examination by Mr. Adam.*

Q. Mrs. Westbrook, you stated you do not believe in demonstrations?

A. No.

Q. Now when you say you do not believe in demonstrations, you feel they do not have a proper place in our society?

A. That's right.

[461] I don't believe there is enough gained from them.

Q. Do you believe they should be made illegal?

A. Well, I don't know about that. I would never participate in one myself.

Q. Let me put it to you this way, recall your school days, would you consider the Boston Tea Party an illegal or legal matter?

Mr. Micheletto: Objection.

The Court: Sustained.

Mr. Adam: Would you have considered the American Revolution—

Mr. Micheletto: Objection.

The Court: Sustained.

Mr. Adam: What about parades for the right to vote?

Mr. Micheletto: Objection.

The Court: Sustained.

Mr. Adam: Well what about demonstration of pickets to remove somebody from office?

Mr. Micheletto: Objection.

[462] The Court: Sustained.

Mr. Adam: The defense will move to remove Mrs. Westbrook for cause.

We are going to ask to exercise peremptory challenge.

Mr. Micheletto: You have no peremptory challenges.

Mr. Adam: There are four charges against this defendant.

The Court: We have ruled on that.

Mr. Adam: We want to exercise the peremptory challenge and dismiss her.

The Court: That will be denied.

We also include such additional facts as we think are necessary to apprise the Court of the circumstances under which the four crimes in question were committed.

John Kelly testified that he was the Deputy Chief of the Patrol Division of the Chicago Police Department on June 11, 1965. Richard Gregory, and others, one of whom, Mr. Al Raby, was the spokesman for the group. They agreed upon a particular parade route that the demonstrators should follow. The marchers were to have two lanes of traffic on the Outer Drive with vehicular traffic set aside. East of Columbus Drive they were to use two lanes, and west of Columbus Drive one lane of the three lanes normally used. On Balbo Drive there is normally only two lanes of traffic open due to a narrowing caused by a pedestrian bridge over the railroad tracks.

At approximately 2 p.m. he observed the demonstrators approaching the intersection of Balbo and Columbus Drives. The marchers were to be channeled down from two lanes in width to the use of one lane plus the sidewalk in order to leave the remaining lane open. A meeting was held with the defendant and others in attendance. Afterwards, one of the leaders yelled to the group of approximately 400 people to sit down. About 300 of the people then sat down. They sat in the intersection bounded from the north to south curbs of Balbo Drive and to the west and east curbs of Columbus Drive.

Travel in all four directions was then blocked. Traffic then backed up for about one block in each direction, south and north on Columbus Drive and on Balbo Drive for about one-third of a block. He then instructed other police officers to tell the group to stop blocking the intersection or they would be arrested.

This met with boos and cat calls. The group then started singing. He then went through the group and asked people to get up telling them if they refused they would be arrested. Some responded, but about 200 people remained seated. After that, the remaining people were placed under arrest. The defendant was seated near the northwest corner of the intersection (Rec. 508-514; not abstr'd.).

Raymond Cisco testified that he was a Chicago Police Officer who was assigned to direct traffic around some demonstrators who would be marching and to maintain peace. At approximately 2 p.m. the marchers reached the intersection of Balbo and Columbus Drives where one of the leaders ran through the group telling them to sit down. The marchers did then sit down and remained there after being told they were creating a hazard to traffic and were blocking traffic. He, along with other officers, was ordered to arrest any person who refused to get up. None of those arrested walked to the police van under their own power, rather they were picked up bodily and carried to the van. After having arrested five people he placed the defendant under arrest. None of the first five kicked, scratched, bit or spit upon him. He approached the defendant and told him to get up or he would be placed under arrest. The defendant cursed him by saying, "Fucker, you're Richard's storm troopers, no better than the Alabama troopers". The officer reached over to grab his right arm and the defendant fell back and started kicking. He was kicked in the groin and after doubling up he was kicked on the arm and chest. Officer McGee who was also present yelled, "Let go of my finger". He couldn't remember much

after that as he was nauseated. He, Officer McGee, other arrestees and the defendant entered the police van. The defendant was hollering and shouting loud. He said, "You have nothing over the storm troopers" and that he "could buy and sell the lot of" them. The defendant told Officer McGee that they were picking on him because he was a "nigger". He then bit officer McGee. The defendant then said that Officer McGee was stealing his money. The defendant said that his biting McGee was civil disobedience and that he was disobedient because it brought attention to him. They arrived at the district station, the prisoners were locked up and the witness was taken to the hospital (Rec. 515-523; not abstr'd.).

Edward McGee testified that he was a Chicago Police Officer. He saw some demonstrators arrive at the intersection of Columbus and Balbo Drives about 1:45 p.m. After a conference with the group leaders and police officials, one of the leaders ran among the marchers telling them to sit down. About 250-300 people sat down in the intersection and refused to disperse after being told, over loudspeakers, that they were obstructing traffic and would be arrested if they didn't leave. A few did get up. The rest were placed under arrest. He had arrested 10 people and then assisted in the arrest of the defendant. None of the first 10 resisted arrest, other than to be carried to the police van. Officer Cisco approached the defendant and told him to get up from the street or he would be arrested. The defendant started cursing and yelling. Cisco bent over the defendant and he heard him yell "Ouch". Cisco had been kicked in the groin as he bent over. The witness was kicked in the chest. He grabbed the defendant's left arm and tried

to pick him up. The defendant grabbed his shirt and a religious medal and tried to pull him to the ground. He grabbed the hair on his chest, ripped his shirt and bit him on the thumb. Another officer got his hand out of the defendant's mouth. Prior to the defendant's having been taken to a van, some articles fell out of his pocket. The witness picked up a driver's license with the defendant's name on it. Cisco was holding his stomach and was trying to vomit. His finger was sore. The defendant told him that they were no better than the Alabama storm troopers; that he could buy or sell anyone of them; and that they were picking on him because he was a "nigger". The defendant stated that public civil disobedience was a form of displaying attention upon himself. When asked why he bit the witness, the defendant answered that the witness was taking his money to which the witness answered that he was not. They arrived at the district station and the defendant was put in the lock-up (Rec. 524-532; not abstr'd.).

Raymond Minus testified that he was a Chicago Police Officer. He testified to substantially the same events leading up to the arrest of the defendant as stated by Officers Cisco and McGee. He observed the defendant talking with Officer Cisco and then subsequently saw the defendant lean back on his hands and kick Officer Cisco in the groin. After the officer doubled over he saw the defendant kick him again on the left elbow. He heard Officer McGee yell, "Ouch, let my arm go". He jerked Officer McGee's arm from the defendant's mouth. He saw the defendant later in the evening in the lock-up. The defendant was chuckling and said that it was all part of the game. He offered the witness a handshake (Rec. 532-536; not abstr'd.).

Edward Egan testified that he was a District Commander in the Chicago Police Department. He saw the defendant in the lock-up and was told by him that $40 had been taken from his pocket by the police officers. The defendant had $19 in his pocket at this time. The defendant said that four ten dollar bills had been taken. When asked how it was possible to take the $40 without taking it all (the other $19) the defendant said to forget it, that he would take it up with his lawyer. The defendant spoke with his lawyer. The lawyer then said:

> "Commander, if you waive these charges, I will waive any charges I am contemplating bringing against them."

The witness replied that there would be nothing like that and that he could bring up any charges he wanted. When he first saw the defendant he was walking normally; when he spoke to the defendant about the money he appeared to be walking normally; and when he walked to the Commander's office to speak to his attorney and when returning therefrom he appeared to walk normally. Upon returning to the cell again the defendant was lying on a bench. He told him that he was injured and appeared to limp badly. He asked him when he was injured and he replied that he was beaten up by the policemen. The Commander said, "If you are injured, I will transport you to Michael Reese Hospital, and then have you removed to Bridewell Hospital". The defendant then demanded to be booked immediately. When told that it was impossible to do so because they were processing other prisoners, the defendant stated that he would stay where he was and go to the hospital when he got out. Michael Reese Hospital was the same one he

sent the injured policemen to (Rec. 537-542; not abstr'd.).

John Patrick Lavin testified that he was a reporter for the Chicago Daily News and was present when the police requested the marchers to narrow the width from six to eight abreast down to three abreast because of the oncoming traffic and the ensuing danger. After some time the demonstrators sat down, he heard the police tell them, many times, that they were creating a nuisance and if they didn't get up they would be arrested. He was about 20 feet from the defendant when the latter was arrested. He saw two police officers approach the defendant and say something to him. As they started to pick him up, the defendant stiffened and started kicking and grabbing, while yelling. He later had a conversation with the defendant who stated that he had kicked the policeman with all his might. The defendant stated that the police were trying to get his money out of his pocket. When asked how this would have been possible in front of all the assembled newspaper reporters and police officials, the defendant responded that was why he was kicking (Rec. 548-552; not abstr'd.).

The jury returned a verdict finding the defendant guilty of two counts of battery and two counts of resisting arrest (Rec. 570-571; not abstr'd.).

The defendant was fined a total of $1400, and was sentenced to serve four concurrent sentences of five months in the Cook County Jail (Rec. 627-628; not abstr'd.).

One final fact should be mentioned: the defendant elected to absent himself from the courtroom during the entire time of trial.

REASON FOR DENYING THE WRIT.

I.

THE QUESTION PRESENTED FOR REVIEW IS NOT A NOVEL ONE AND IN ANY EVENT, THERE IS NO "MANIFEST ERROR" IN REFUSING TO EXCLUDE VENIREMAN WESTBROOK FOR CAUSE.

There can be no better place to begin this argument than by looking to the case of Reynolds v. United States, 98 U.S. 45, a case cited by the defendant, though it was ultimately affirmed. In Reynolds, the Court announced the rule that when reviewing the decision of a lower court not to exclude a venireman upon a claim of bias, "the finding of the trial court upon that issue ought not to be set aside by a reviewing court, unless the error is manifest." (P. 156). The issue is in large part factual, explained the Court; accordingly, the trial court is in a better position to make a judgment. He may examine the manner of the juror during the voir dire, while the reviewing court generally is unable to glean from the record the same impressions. Using this approach, the Court found no manifest error in Reynolds when a trial court refused to exclude a venireman who "believed" he had formed an opinion about the case, (though it was never expressed) but which he did not think would influence his verdict in hearing the testimony.

The rule in Reynolds was applied by this Court in Spies v. Illinois, 123 U.S. 131 at 179. Defendants had been tried and convicted for crimes arising out of a street demonstration, called by its organizers for the purposes of protest and dissent from the established order. Like the venireman in the instant case, a venireman in that case indicated in the voir dire his opposition generally to the

Haymarket gathering, and to the political philosophies espoused there. In fact, he went further than the venireman in this case and stated he held a definite opinion as to the guilt or innocence of the defendants or some of them. Upon further inquiry, however, the venireman in Spies established that he could lay aside his previously held notions and that he could become an impartial juror. (See pps. 170-178 of a verbatim account of the voir dire as it applied to the juror in question.) The Court found from reviewing the case that there was no manifest error and ultimately dismissed the petition for a writ of error.

The facts in this case can also be compared to those found in Thiede v. Utah Territory, 159 U.S. 510 at 515, where the defendant, a saloon keeper, was tried and convicted of murder. On voir dire, one of the jurors stated that he had a prejudice against saloon keeping as a business. In addition, the juryman stated that he would consider the defendant's occupation in evaluating his testimony. The Court decided, however, since the charge against the defendant had no relationship to the occupation in which he was engaged, a prejudice against such occupation is entirely immaterial. See also Holt v. United States, 218 U.S. 245 at 248, affirmed on facts much stronger for the defense than those found in the instant case.

The venireman in the instant case stated that she did not favor demonstrations because she did not believe there is enough gained from them. She also stated that she could be a fair and impartial juror. Needless to say, petitioner was not tried and convicted of engaging in a demonstration.

Petitioner also complains that he should have been allowed to examine venireman Westbrook in greater detail, with questions implying a connection between the unlawful actions of the petitioner in this case and the actions of

the early American colonists in the American Revolution and the Boston Tea Party. Whether such a connection exists is arguable at best, but the important point is that the trial court's refusal to pursue that particular line of questioning, like the court's refusal to exclude a certain venireman, is a matter of the trial court's discretion which should not be disturbed on review except where it is clearly abused. Connors v. United States, 158 U.S. 408 at 411-416.

Since we have elected to begin this argument with a case cited by petitioner, it seems only proper that we conclude with another case cited by him. In Irvin v. Dowd, 366 U.S. 717, at 722-723, while it was reversed on its facts, the Court reiterated a reasonable standard for jurors, especially those participating in cases which are highly publicized or which contain controversial or emotional issues.

> "It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." (pp. 722-723)

The Court went on to re-affirm the vitality of Reynolds, a case we have previously visited, as to the need for "manifest error" before a case may be reversed.

In summary, we submit that the issue raised by petitioner herein has been considered by this Court time and time again. Nothing in the instant case suggests "manifest error" on the part of the trial court and we do therefore strongly urge the Court not to burden itself with the task of hearing a case so lacking in substance.

CONCLUSION

For the reasons stated we respectfully request that this Court deny a Writ of Certiorari to review the judgment of the Illinois Appellate Court entered in this case.

Respectfully submitted,

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